



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

January 11, 2017

By ECF

The Honorable Edgardo Ramos
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: United States v. Ahmed Mohammed El Gammal, 15 Cr. 588 (ER)

Dear Judge Ramos:

The Government writes regarding its objection to DX 113-AA, an October 26, 2014 Facebook messenger exchange between Samy Elgoarany and Rameez Farooqui (the "Messages"). For the reasons set forth below, the Government's objection should be sustained.

As the Government understands it, the defense seeks to argue that the Messages show that Elgoarany asked Farooqui to download Cryptocat so Elgoarany could "fill [Farooqui] in" on his recent activities, *see* DX 113-AA at 1-2; that Farooqui then downloaded Cryptocat; and that he then had an encrypted conversation with Elgoarany.

Although Messages are contained in records that Facebook kept in the ordinary course of business, a number of the Messages are relevant only for the truth of the matter asserted and thus contain an additional level of hearsay, to which no hearsay exception applies. *See* Fed. R. Evid. 805; *United States v. Cruz*, 894 F.2d 41, 44 (2d Cir.1990) (explaining that multiple hearsay in business record was not admissible absent "showing that they fit within the hearsay within hearsay exception"). This is particularly true of the messages on pages 2 and 3, in which Farooqui advises Elgoarany on his efforts to download Cryptocat, and Elgoarany and Farooqui then apparently attempt to set up a conversation. On page 2 of the exhibit, for example, Farooqui tells Elgoarany "downloaded," which appears to be an assertion that he has downloaded Cryptocat. On page 3, Elgoarany tells Farooqui "k im here." On the same page, in response to a question from Elgoarany "u using the thing right now?," Farooqui responds "yea but it says you're not using it."

cc: Sabrina P. Shroff/Annalisa Mirón/Daniel Habib
Counsel for Ahmed Mohammed El Gammal